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Supreme Court, U.S.
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(1)

No._____

IN THE

Supreme Court of the United States

MARGUERITE EVANS WILLNER
AND
MICHAEL A. WILLNER
Petitioners,

v.

JOHN T. FREY, CLERK, FAIRFAX COUNTY
CIRCUIT COURT
AND
COMMONWEALTH OF VIRGINIA
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the *Rooker-Feldman* doctrine bars federal court subject matter jurisdiction over a federal claim which was not adjudicated in state court, does not seek review and rejection of the state-court judgment on the merits, and complains of an injury caused by the actions of a third party and not by the judgment itself, but is inextricably intertwined with the state-court judgment such that it requires review of the state court's ruling and seeks to effectively undo the relief granted thereunder.

PARTIES TO THE PROCEEDING

Petitioners Marguerite Evans Willner and Michael A. Willner were plaintiffs-appellants below.

Respondent John T. Frey, Clerk, Fairfax County Circuit Court, was the defendant-appellee below.

Respondent Commonwealth of Virginia was the intervenor below.

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DECISIONS BELOW

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JURISDICTION

The judgment for the court of appeals was entered August 3, 2007. The court denied appellants' petition for rehearing and rehearing *en banc* on August 29, 2007. App. 44a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Just Compensation Clause of the Fifth Amendment, also referred to as the Takings Clause, provides "... nor shall private property be taken for public use, without just compensation." U.S. Const., Amdt. 5.

The Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983 provides in part, "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United

States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress..."

28 U.S.C. § 1257 vests the U.S. Supreme Court with "jurisdiction over appeals from final state-court judgments."

28 U.S.C. § 1331 vests the U.S. district courts with "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

STATEMENT OF THE CASE

A. Introduction

A split among the Circuits concerning the interpretation of the *Rooker-Feldman* doctrine has led to the evisceration of the Civil Rights Act[1] in jurisdictions where the courts have expanded the doctrine's reach, as in the present case, contradicting the Supreme Court's mandate to limit its scope. Despite Justice Stevens' observation that the Court in *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280 (2005), "finally interred the so-called '*Rooker-Feldman* doctrine,'" *Lance v. Dennis*, 546 U.S. 459, 468 (2006) (Stevens, J., dissenting), and the fact that the Court in *Lance* "quite properly

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[1] The Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983

disapprove[d] of the District Court's resuscitation of a doctrine that has produced nothing but mischief for 23 years," *Id.*, a number of Circuits broadly interpret the doctrine to bar jurisdiction to hear certain federal claims that have not been adjudicated in state court and do not seek review and rejection of a state-court judgment on the merits.

"[T]he Supreme Court of the United States is the only federal court that may properly exercise appellate jurisdiction over state court judgments." *E. Hill Synagogue v. City of Englewood*, 2007 U.S. App. LEXIS 17108 (3d Cir. 2007). Under the *Rooker-Feldman* doctrine "a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Johnson v. DeGrandy*, 512 U.S. 997, 1005-1006 (1994). That the *Rooker-Feldman* doctrine is meant to occupy "narrow ground," is evidenced by the fact that the Supreme Court has only applied the doctrine twice -- in the two cases after which the doctrine was named. *McKithen v. Brown*, 481 F.3d 89, 96 (2d Cir. 2007).[2]

"Variously interpreted in the lower courts, the doctrine has sometimes been construed to extend far beyond the contours of the *Rooker* and *Feldman* cases, overriding Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts..." *Exxon Mobil Corp. v. Saudi Basic*

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[2] Petition for certiorari filed (Sep. 12, 2007) (No.07-350).

Indus. Corp., supra, 544 U.S. at 283. The Court in *Exxon* attempted to reign in *Rooker-Feldman* by holding that it, "...is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court *review and rejection* of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp., supra,* 544 U.S. at 284 (emphasis added).

The expansive application of *Rooker-Feldman* by a number of Circuits is a major blow to enforcement of the federally protected rights of individuals against all forms of official violations under 42 USC § 1983. See *Dennis v. Higgins*, 498 U.S. 439, 443 (1991). The "very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights," *Woodford v. Ngo*, 126 S. Ct. 2378, 2396 (2006), citing *Mitchum v. Foster*, 407 U.S. 225, 242 (1972).

One major culprit responsible for the doctrine's broad application is the "inextricably intertwined" analysis. First used in *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 483 (1983), it is a staple in some Circuits, each with its own interpretation, while shunned in others. It should be shunned in all of them. "*Feldman*, a nonunanimous, 25-page opinion written by Justice Brennan in 1983, was incorrectly decided and generated a plethora of confusion and debate among scholars and judges." *Lance v. Dennis, supra,* 546 U.S. at 467 (Stevens, J., dissenting).

The Ninth Circuit has applied the test to support a *Rooker-Feldman* dismissal in at least 15 cases since *Exxon* was decided less than three years ago, the vast majority of which were unpublished opinions with little or no explanation as to why or how the test was met. App. 46a. By comparison, this Court has never applied *Rooker-Feldman*, let alone the inextricably intertwined analysis, to dismiss an action for want of jurisdiction since its decision in *Feldman* 24 years ago.

There is a split among the Circuits as to the application of the "inextricably intertwined" test. The Sixth Circuit has expressly abandoned it and the Second, Third, Seventh, and Eleventh Circuits have interpreted it narrowly. The Fifth and Ninth Circuits, however, have broadly applied it to support dismissal of federal claims that were not adjudicated in state court and did not challenge a state-court judgment on the merits

There is also a split among the Circuits regarding the interpretation of the "review and rejection" clause of *Exxon*'s *Rooker-Feldman* test. The Ninth and Tenth Circuits have interpreted it to dismiss a federal claim that "would reverse or undo the relief granted" by the state-court or "undercut" the state-court ruling. This contradicts *Exxon*, however, where the Court held that a federal district court has jurisdiction over a plaintiff's independent claim even if it contradicts a state-court's ruling. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp, supra,* 544 U.S. at 293.

Consistent with the ruling in *Exxon*, the Second Circuit has expressly disavowed a relief-centric interpretation of "review and rejection" and, along with the Seventh, Eighth, and Eleventh Circuits, has ruled instead that *Rooker-Feldman* applies only to federal claims which seek to adjudicate the merits of the state court case.

The First, Second, and Sixth Circuits have also applied an injury-centric approach ruling that *Rooker-Feldman* bars jurisdiction when the federal plaintiff alleges an injury resulting from the state-court judgment itself and not from the actions of a third party. This approach, however, allows for the possibility that a federal suit which does not challenge a state court's rulings on the merits may still be barred.

The Fourth Circuit in this case barred jurisdiction under *Rooker-Feldman* by applying both the "inextricably intertwined" analysis and the "review and rejection" requirement in an overly expansive manner. It held that the Willners' federal claim was so "inextricably intertwined" with a state-court case that it required the district court to "review" the state court's ruling. *Willner v. Frey*, 2007 U.S. App. LEXIS 18514 (4th Cir. 2007). It also concluded that their claim sought to "reject" the state-court judgment because it sought to reverse the relief granted thereunder.

Glaringly, the Fourth Circuit did not address the fact that the state court did not adjudicate the Willners' federal claim or the fact that the Willners are not asking the federal court to adjudicate the

merits of the state court case. The Fourth Circuit also erroneously concluded that the Willners complained of an injury caused by the state-court judgment, when in fact, as a matter of law, the constitutional injury of which they complain was caused by the actions of a third party. Given these facts, the Willners' claim would not have been dismissed under *Rooker-Feldman* as interpreted by seven of the Circuits.

Applying *Rooker-Feldman* to bar jurisdiction over federal claims that have not been heard in state court has the potential to greatly weaken the Civil Rights Act, hobbling the federal protection of federal constitutional rights. 74 Notre Dame L. Rev. 1175, 1186 (1999). The case at bar provides this Court with an excellent opportunity to establish a bright-line rule for the application of *Rooker-Feldman* (or as Justice Stevens would argue, *Rooker sans Feldman*) by expressly abandoning the "inextricably intertwined" analysis and clarifying the "review and rejection" element of *Exxon*'s *Rooker-Feldman* test to bar jurisdiction over only those federal claims that seek to adjudicate the merits of a state-court case.

B. Factual Background and Procedural History

Marguerite and Michael Willner owned a strip of land in Fairfax County, Virginia, the "Disputed Property," which their neighbors, the Leggetts, claimed by adverse possession. The Leggetts filed suit (hereinafter referred to as "*Fairfax I*") in state court to eject the Willners from the Disputed Property. The Leggetts knew, and never objected to

the fact, that the Willners had a recorded deed to the Disputed Property and were paying taxes on it. Furthermore, the Willners had not abandoned the Disputed Property and accessed it freely.

Nevertheless, the state court ruled that the Leggetts met the elements of adverse possession and ordered that title to the Disputed Property be taken away from the Willners and given to the Leggetts. As explained below (*infra*, pp. 27-28), the Willners did not and could not, as a matter of law, raise a Just Compensation Clause claim under the Fifth Amendment to the U.S. Constitution in *Fairfax I*, consequently the state court did not address it. A copy of the order was filed in the county land records which are maintained by the clerk of the court, John T. Frey, the defendant in the present suit. Neither Frey nor the Commonwealth of Virginia were parties to *Fairfax I*. The Willners' petition for appeal to the Virginia Supreme Court was denied and they did not file a petition for writ of certiorari to the U.S. Supreme Court.

The Willners subsequently filed suit against the Commonwealth in state court ("*Fairfax II*"), challenging the law of adverse possession as applied on state constitutional grounds and sought just compensation for the taking of their property. The Commonwealth demurred, arguing that its adverse possession law as applied violated neither the Virginia Constitution nor the United States Constitution. The state court sustained the Commonwealth's demurrer, dismissing the Willners' suit with prejudice, but expressly refused to comment on any federal implications.

The Willners' Just Compensation claim was now ripe, so they filed the present suit in federal court seeking a declaratory judgment that the Commonwealth had violated the Willners' federal constitutional rights when it refused to compensate them for the taking of their title to the Disputed Property, among other claims. The Willners argue that the order in *Fairfax I*, by which the government took the Willners' title to their land, became invalid when the Commonwealth denied them compensation for the taking. Consequently, they seek to effectively retrieve their title by enjoining Frey to remove the order from the land records.

The district court dismissed the Willners' suit under *Rooker-Feldman*, among other theories, holding that their claim was "inextricably intertwined" with the state-court judgment in *Fairfax I* and because they sought removal of the state court order from the land records, they were, according to the court, asking it to reject the state-court judgment. *Willner v. Frey*, 421 F. Supp. 2d 913, 923 (E.D. Va., 2006). The Willners appealed the decision to the Fourth Circuit, which allowed the Commonwealth of Virginia to intervene. The Fourth Circuit affirmed the district court's dismissal and subsequently denied the Willners' petition for rehearing.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH THE RULINGS OF SEVEN CIRCUITS AND IS REPRESENTATIVE OF A SPLIT IN THE CIRCUITS REGARDING THE *ROOKER-FELDMAN* DOCTRINE, A BROAD INTERPRETATION OF WHICH UNDERMINES THE CIVIL RIGHTS ACT AND CONFLICTS WITH THE SUPREME COURT'S DECISIONS IN *EXXON* AND *LANCE*

This petition should be granted because the overly broad interpretation of *Rooker-Feldman* applied by a number of Circuits to bar federal court jurisdiction over federal claims is undermining the Civil Rights Act by closing the federal courts to complaints against state officials. The Fourth Circuit's decision in the instant case highlights two major problems which this Court's decisions in *Exxon* and *Lance* did not solve, *i.e.*, overly broad interpretations of both the "inextricably intertwined" analysis and the "review and rejection" clause of *Exxon*'s *Rooker-Feldman* test. This case presents the Court with a much-needed opportunity to further clarify *Rooker-Feldman* so that it is only applied to situations in which a federal plaintiff is effectively seeking appellate review of a state court judgment.

"The *Rooker-Feldman* doctrine merely recognizes that 28 U.S.C. § 1331... is a grant of original jurisdiction, and does not authorize district courts to exercise appellate jurisdiction over state-court

judgments," which Congress has reserved to the Supreme Court, *see* 28 U.S.C. § 1257(a). *McKithen v. Brown*, 481 F.3d 89, 96 (2d Cir. 2007). The doctrine "prohibits federal suits that amount to appeals of state-court judgments. When the state-court judgment is not itself at issue, the doctrine does not prohibit federal suits regarding the same subject matter, or even the same claims, as those presented in the state-court action. *Bolden v. City of Topeka*, 441 F.3d 1129, 1139 (10th Cir. 2006).

It is undisputed that this Court's decisions in *Exxon* and *Lance* were intended to narrow the scope of *Rooker-Feldman* so it is not used by the lower courts to override "Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts...." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp., supra*, 544 U.S. at 283. As the Court explained:

> The *Rooker-Feldman* doctrine takes its name from the only two cases in which we have applied this rule to find that a federal district court lacked jurisdiction... Neither *Rooker* nor *Feldman* elaborated a rationale for a wide-reaching bar on the jurisdiction of lower federal courts, and our cases since *Feldman* have tended to emphasize the narrowness of the *Rooker-Feldman* rule... Indeed, during that period, 'this Court has never applied *Rooker-Feldman* to dismiss an action for want of jurisdiction.' "*Rooker-Feldman*, we explained, is a narrow doctrine,

> confined to 'cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.' The doctrine applies only in 'limited circumstances,'... where a party in effect seeks to take an appeal of an unfavorable state-court decision to a lower federal court.

Lance v. Dennis, supra, 546 U.S. at 463-66. (citations omitted).

Unfortunately, a number of Circuits, including the Fourth Circuit in the case at bar, are still interpreting *Rooker-Feldman* broadly to bar jurisdiction over federal claims that may effectively reverse the relief granted under state-court judgments, but are not, in substance, appeals of the judgments. When the courts apply a broad interpretation of *Rooker-Feldman* they deny plaintiffs a federal forum for the alleged deprivation of their federal rights. *Powers v. Hamilton County Pub. Defender Comm'n*, 2007 U.S. App. LEXIS 20607 (6th Cir. 2007). This is especially problematic in the civil rights arena where numerous cases against state officials who have allegedly violated the constitutional rights of individuals have been dismissed without the federal courts reaching the merits of their complaints.

II. THE "INEXTRICABLY INTERTWINED" ANALYSIS HAS BEEN BROADLY APPLIED BY SOME CIRCUITS TO BAR JURISDICTION OVER FEDERAL CLAIMS THAT HAVE NOT BEEN ADJUDICATED IN STATE COURT AND DO NOT SEEK REJECTION OF A STATE-COURT JUDGMENT ON THE MERITS

Contrary to this Court's mandate, the Fifth, Ninth, and Tenth Circuits, and the Fourth Circuit in this case, have applied a broad interpretation of the *Rooker-Feldman* doctrine to support dismissal of federal claims which they deem "inextricably intertwined" with the issues decided in a state-court case.

The Fifth Circuit has recently conflated its broad interpretation of the inextricably intertwined test with preclusion principles. See *Riley v. La. State Bar Ass'n*, 214 Fed. Appx. 456 (5th Cir. 2007), where the court held:

> ...plaintiff's complaint "falls under the aegis of *Rooker-Feldman* because it raises issues 'inextricably intertwined' with a state court judgment, such that the district court was 'in essence being called upon to review the state-court decision,' and if civil rights were violated, "federal courts lack jurisdiction over claims that could have been, but were not raised in state court."

Id. at 459 (citations omitted). It is not sufficient, however, to bar jurisdiction under *Rooker-Feldman* if a federal suit simply requires the district court to "review," a state-court decision, but not reject it on the merits. "Merely requiring a federal court to understand what it is that a state court decided does not implicate *Rooker-Feldman*, but rather normal preclusion principles and rules of construction." *Coles v. Granville*, 448 F.3d 853, 859 (6th Cir. 2006). In addition, while preclusion principles may bar a U.S. district court from hearing a federal claim that could have been raised in state court but was not, it is not jurisdictionally barred from doing so. "*Rooker-Feldman* is not simply preclusion by another name." *Lance v. Dennis*, *supra*, 546 U.S. at 466.

In the instant case, the Fourth Circuit, without addressing the fact that the Willners do not challenge the state-court's decision on the merits, barred jurisdiction under *Rooker-Feldman* pursuant to an "inextricably intertwined" analysis similar to that of the Fifth Circuit's. It held that "the *Rooker-Feldman* doctrine prevents plaintiffs from raising issues in federal court that are so 'inextricably intertwined' with a state court judgment that they would require the district court to *review* the state court's ruling." *Willner v. Frey*, 2007 U.S. App. LEXIS 18514 (4th Cir. 2007) (emphasis added).

The Willners' Just Compensation claim, however, does not seek federal court review or rejection of the merits of the state-court case. In fact, the Willners concede, for purposes of this suit, that the state court correctly applied Virginia state law when it held that the Leggetts met the elements of adverse possession

and, as a consequence, the Commonwealth was authorized by state law to take the Willners' title to the Disputed Property and give it to the Leggetts.

If the district court were to hear this case, it may want to review the state court ruling to ensure a taking had occurred to determine whether or not the Willners were due just compensation. A ruling on that issue, however, would have no impact on the state-court's judgment that the Leggetts met the elements of adverse possession and were entitled, under Virginia law, to have the government take the Willners' title to the Disputed Property and give it to them.

This position is consistent with the ruling in *Pascoag Reservoir & Dam, LLC v. Rhode Island*, 217 F.Supp.2d 206 (D.R.I. 2002), *aff'd on other grounds*, 337 F.3d 87 (1st Cir. 2003), which held that *Rooker-Feldman* did not bar jurisdiction over a Takings claim filed by a landowner after he had been deprived of his property by adverse possession in a state-court case. "For the takings claim to succeed it is not necessary to reverse any part of the state court's decision." *Pascoag, supra*, 217 F.Supp.2d at 215. Thus, a federal suit is not "inextricably intertwined" with a state-court case sufficient to bar jurisdiction under *Rooker-Feldman* where the federal plaintiff seeks review, but not rejection, of a state judgment.

The Ninth Circuit has applied an "inextricably intertwined" analysis, without explanation, in the vast majority of its *Rooker-Feldman* dismissals since this Court handed down the decision in *Exxon*. No

doubt its frequent use is due, in part, to its expansive interpretation of the language: "... claims raised in the federal court action are 'inextricably intertwined' with the state court's decision such that the adjudication of the federal claims *would undercut the state ruling....*" *Kucernak v. Sinfield*, 137 Fed. Appx. 59, 60 (9th Cir. 2005) (emphasis added) cert. denied, 546 U.S. 1040 (2005) citing *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003) ("... under *Rooker-Feldman*, 'we must pay close attention to the relief sought by the federal-court plaintiff.... Bianchi's claims would still be barred under *Rooker-Feldman* even if the state court had not actually decided his constitutional claims.")

Along the same lines, the Tenth Circuit has explained that, "... the purpose of the term ["inextricably intertwined"] is to highlight that a *challenge to a judgment* is barred even if the claim forming the basis of the challenge was not raised in the state proceedings." *Bolden v. City of Topeka*, 441 F.3d 1129, 1141 (10th Cir. 2006). Whether or not *Rooker-Feldman* applies, therefore, depends upon what the court deems to be a "challenge to a judgment." In *Mo's Express, LLC v. Sopkin*, 441 F.3d 1229 (10th Cir. 2006), the Tenth Circuit advocated an expansive relief-centric approach: "... a party may lose in state court and then raise precisely the same legal issues in federal court, *so long as the relief sought in the federal action would not reverse or undo the relief granted by the state...*" *Id.* at 1237 (emphasis added). *See also Wallin v. Arapahoe County Det. Facility*, 2007 U.S. App. LEXIS 18009, at 15 (10th Cir. 2007) (*Rooker-Feldman* bars claims

where the relief sought in federal court would reverse or undo the relief granted in state court.)

But a federal suit that does no more than challenge the *relief* granted by a state court or "undercuts" a state judgment without challenging the court's legal conclusions, is not, in substance, an appeal and, therefore, not barred by *Rooker-Feldman*. As this Court held in *Exxon*, so long as the federal plaintiff presents an independent claim, "albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . ., then there is jurisdiction..." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp., supra,* 544 U.S. at 293.

In sharp contrast to the Ninth and Tenth Circuits' interpretations of the "inextricably intertwined" language, and in accordance with the holding in *Exxon*, the Seventh Circuit has held, "while a judgment in federal court... might undermine the state court's rulings..., *Rooker-Feldman* is nevertheless inapplicable." *Kathrein v. McGrath*, 166 Fed. Appx. 858, 863 (7th Cir. 2006) cert. denied, 127 S. Ct. 67 (U.S. 2006). *See also GASH Assocs. v. Village of Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993) (recognizing that federal jurisdiction exists even over an independent claim that incidentally denies a legal conclusion that a state court has reached).

Recognizing that "[t]he 'inextricably intertwined' language from *Feldman* led lower federal courts... to apply *Rooker-Feldman* too broadly," *Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77, 87 (2d Cir. 2005), the Second Circuit has also held that "a

plaintiff who seeks in federal court a result opposed to the one he achieved in state court does not, for that reason alone, run afoul of *Rooker-Feldman*." *Id.* at 87. The court concluded that "the phrase 'inextricably intertwined' has no independent content. It is simply a descriptive label attached to claims that meet the requirements outlined in *Exxon Mobil*." *Id.*

Even the Tenth Circuit has held that a federal court "is not conducting appellate review" where a plaintiff is not asking the court to review a state court's rulings to determine whether they were legally sound, "regardless of whether compliance with the second judgment would make it impossible to comply with the first judgment. In this [situation] the conflict between the two judgments is to be resolved under preclusion doctrine, not *Rooker-Feldman*." *Bolden v. City of Topeka, supra,* 441 F.3d at 1143. See also *Wideman v. Colorado*, 2007 U.S. App. LEXIS 23086 (10th Cir. 2007) (*Rooker-Feldman* only bars jurisdiction over cases where "success in the federal court would require overturning the state court decision..."). These decisions, however, appear to contradict the Tenth Circuit's own ruling in *Mo's Express, supra*, or the court intended to expand the doctrine's reach by creating an exception to the rule, *i.e.*, *Rooker-Feldman* is inapplicable where a federal suit does not seek to overturn a state court decision, *unless the relief sought in federal court would undo the relief granted in state court.*

Similarly, in the present case, the Fourth Circuit's ruling either contradicts or creates an exception to its prior decisions in *Washington v.*

Wilmore, 407 F.3d 274 (4th Cir. 2005) and *Davani v. Va. DOT*, 434 F.3d 712, 714 (4th Cir. 2006), which properly limited *Rooker-Feldman*'s reach. The Fourth Circuit's application of the "inextricably intertwined" analysis in the present case contradicts its pronouncement in *Davani v. Va. DOT*, *supra*, where it held that the "inextricably intertwined" language "does not create an additional legal test for determining when claims challenging a state-court decision are barred, but merely states a conclusion." *Id.*, 434 F.3d at 719. Where the inextricably intertwined test does nothing more than state a conclusion, the court erred in relying on it to dismiss the Willners' claim.

In *Washington v. Wilmore*, *supra*, the Fourth Circuit applied an appropriately narrow interpretation to overrule a dismissal on *Rooker-Feldman* grounds: "The 'inextricably intertwined' prong of the doctrine bars a claim that was not actually decided by the state court but where success on the federal claim depends upon a determination that the state court wrongly decided the issues before it." *Washington v. Wilmore*, *supra*, 407 F.3d at 279. Thus, in the present case, not only did the Fourth Circuit ignore the fact that the Willners' federal claim did not seek a determination that the state court wrongly decided the issues before it, the Fourth Circuit also either ignored its own precedent or created an exception to its *Rooker-Feldman* test, by applying it to a claim that did not challenge the state-court judgment on the merits.

Either way, the Fourth Circuits' "inextricably intertwined" analysis is overly broad in that it bars

jurisdiction over a claim which requires a federal court to "review" a state-court case, but does not require "rejection" of the state judgment on the merits. This interpretation contravenes this Court's rulings in *Exxon* and *Lance* and should be overturned.

III. SEVERAL CIRCUITS REJECT OR NARROWLY APPLY THE "INEXTRICABLY INTERTWINED" ANALYSIS

Post-*Exxon* some Circuits narrowly apply the "inextricably intertwined" analysis, if they apply it at all, while the Sixth Circuit has expressly abandoned it. See *Pittman v. Cuyahoga County Dep't of Children & Family Servs.*, 2007 U.S. App. LEXIS 17388, 12 (6th Cir. 2007) ("Even though pre-*Exxon Rooker-Feldman* analysis employed the "inextricably intertwined" analysis... we have since abandoned [it].") (citations omitted).

In a recent opinion, the Third Circuit also indicated that the "inextricably intertwined" analysis was no longer valid: "...the *Exxon* Court noted but did not discuss "inextricably intertwined," relegating *Feldman*'s use of that phrase to a mere 'expression....' There is little reason to believe that 'inextricably intertwined' after *Exxon* does anything more than state a conclusion or describe a claim that meets the requirements of *Exxon*." *E. Hill Synagogue v. City of Englewood, supra*, 2007 U.S. App. LEXIS 17108, 6-7 (citation omitted). In *E. Hill Synagogue* a religious not-for-profit corporation filed suit against a New Jersey city and its planning

board, alleging that a board resolution violated its federal rights. The district court found that the *Rooker-Feldman* doctrine applied and dismissed the suit for lack of subject matter jurisdiction. "In the District Court's view, granting relief to East Hill, were the Planning Board's resolution found to violate the Constitution or federal law - an issue inextricably intertwined with what was before the Planning Board - would necessarily void the state court's conclusion." *Id.* at 3-4. The 3rd Circuit, applying *Exxon*'s *Rooker-Feldman* analysis reversed.

> Clearly, East Hill was a state court "loser" and clearly, too, it lost before the proceedings before the District Court commenced. But the injury complained of is not a legal injury caused by a state court judgment, much less a state court judgment [on plaintiffs' constitutional claims]. Rather, at bottom, the injury complained of is the injury caused by the Planning Board when it [made a determination which] the state court merely accepted but neither actually litigated nor even analyzed as [a federal claim].

Id. at 5-6. Similarly, in the present case, the Willners' complain of an injury caused by the Commonwealth when it determined to deny the Willners' compensation, a determination that was "neither actually litigated nor even analyzed" by the state court.

While the Third Circuit noted that, "[t]he District Court did not find it necessary to reach the issue of whether the federal claims had been actually litigated in state court...," *Id.*, in an earlier decision, the Third Circuit had held that "...where a state action does not reach the merits of a plaintiff's claims, then *Rooker-Feldman* does not deprive the federal court of jurisdiction." *Whiteford v. Reed*, 155 F.3d 671, 674 (3d Cir. 1998). This is how the "review and rejection" element of the *Rooker-Feldman* test should be interpreted because it truly describes a case that, in substance, would be an appeal of a state-court judgment. It also comports with Justice Marshall's interpretation of the "inextricably intertwined" analysis as explained in his concurrence in *Pennzoil v. Texas*, 481 U.S. 1 (1987):

> While the question whether a federal constitutional challenge is inextricably intertwined with the merits of a state-court judgment may sometimes be difficult to answer, it is apparent, as a first step, that the federal claim is inextricably intertwined with the state-court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it.

Id., 481 U.S. at 25 (citation omitted). One commentator also strongly endorses this issues-based analysis:

> My thesis is that the *Rooker-Feldman* doctrine can claim jurisdictional status

> only in the very narrow situations in which litigants ask the federal courts to rehear issues identical to those on which they have already obtained state court decisions or, in other words, those situations in which an appeal would lie.

74 Notre Dame L. Rev. 1175, 1179 (1999). Similarly, in *Fairfax I* an appeal of the Willners' Just Compensation claim did not lie because the claim did not become ripe until well after the judgment was final. Thus, *Rooker-Feldman* does not apply because the federal district court could not have usurped appellate review jurisdiction over an inchoate claim which the U.S. Supreme Court itself would not have heard on appeal of the judgment in *Fairfax I.*

The Eighth Circuit has employed a similar analysis: "... the *Rooker-Feldman* doctrine does not bar federal claims brought in federal court when a state court previously presented with the same claims declined to reach their merits... [For Rooker-Feldman to apply] a state court need only indicate it has considered, reached the merits, and rejected the federal claims in order for that doctrine to apply." *Simes v. Huckabee,* 354 F.3d 823, 830 (8th Cir. 2004). The Eleventh Circuit is also in this camp. See *Alyshah v. United States,* 2007 U.S. App. LEXIS 17601, 5-6 (11th Cir. 2007) ("A federal claim is inextricably intertwined with a state court judgment if the federal claims succeed only to the extent that the state court wrongly decided the issues before it and, if so, whether the plaintiffs had a reasonable opportunity to present their federal claims in the state court proceedings.") (citation omitted). So too

the Seventh Circuit. See *Mannix v. Machnik*, 2007 U.S. App. LEXIS 16144 (7th Cir. 2007) ("The core meaning of that doctrine, as the Court stressed in [*Lance* and *Exxon*], is that federal district courts cannot review the merits of decisions made by state courts in civil litigation.")

The decisions in *Rooker* and *Feldman* also support an interpretation of the "review and rejection" prong of *Exxon*'s *Rooker-Feldman* test to mean review and rejection of a state-court judgment on the merits. In *Rooker*, the state court loser filed a bill in equity in federal court to have a state–court judgment overturned on the grounds that it did not follow precedent. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415 (1923).

The *Rooker* Court concluded that the district court did not have jurisdiction to hear the claim:

> ... the judgment was rendered in a cause wherein the circuit court had jurisdiction . . .; that a full hearing was had therein; that the judgment was responsive to the issues, and that it was affirmed by the Supreme Court of the State on an appeal by the plaintiffs. If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it

> open to reversal or modification in an appropriate and timely appellate proceeding.

Id. (emphasis added).

In *Feldman*, the state court losers also attacked the validity of the state court's rulings, arguing that the "state" court (the District of Columbia Court of Appeals) had "acted arbitrarily and capriciously in denying their petitions for waiver and that the court acted unreasonably and discriminatorily in denying their petitions...." *D.C. Court of Appeals v. Feldman*, *supra*, 460 U.S. at 486.

Thus, in both *Rooker* and *Feldman* the federal plaintiffs challenged the state-court judgments on the merits and, therefore, their federal suits were barred because they were, in effect, appeals of state-court judgments.

IV. *ROOKER-FELDMAN* DOES NOT BAR JURISDICTION OVER A FEDERAL CLAIM THAT SEEKS TO EFFECTIVELY UNDO THE RELIEF GRANTED IN A STATE-COURT CASE WITHOUT SEEKING REJECTION OF THE STATE-COURT JUDGMENT ON THE MERITS

In reaching its decision in the present case, the Fourth Circuit focused on the "injury" prong of *Exxon*'s *Rooker-Feldman* test ("complaining of injuries caused by state court judgments") to supplement its inextricably intertwined analysis and equated rejection of the relief granted by the state

court with rejection of the state-court's judgment. It held:

> ... the key inquiry is not whether the state court ruled on the precise issue raised in federal court, but whether the "state-court loser who files suit in federal court seeks redress for an injury caused by the state-court decision itself... the relief requested, an injunction ordering Frey to remove the state court's final order from the county's land records, leaves little doubt that the Willners want the district court to reverse the state court's judgment.

Willner v. Frey, 2007 U.S. App. LEXIS 18514 at 7 (4th Cir. 2007). The Willners, however, do not seek to reverse the state court's judgment on the merits; they simply seek to protect their constitutional rights, which were violated after the state judgment became final. When the Commonwealth refused to compensate them for the taking of their title to the Disputed Property, they sought to effectively retrieve it by having the state-court order removed from the land records. By ruling that *Rooker-Feldman* bars jurisdiction based on the fact that the Willners' federal claim seeks to retrieve their title to land, the Fourth Circuit improperly equates the relief granted by a state court with its judgment on the merits.

By shifting the analysis away from whether or not the Willners challenge the state court's decision on the merits, to whether or not they seek to undo an

injury attributable to the state-court judgment, the Fourth Circuit's analysis moves away from the heart of the issue – whether the Willners' Just Compensation claim is, in substance, an appeal of the state-court's judgment. It is not. The Willners complain of no error in the state court's ruling that the Leggetts met the elements of adverse possession. They also do not claim that the court erred when it ruled that according to state law, the Commonwealth was authorized to take the Willners' title to the Disputed Property and give it to the Leggetts. Thus, the Willners do not seek review and rejection of the state judgment on the merits.

They also do not complain of an injury caused by the state-court judgment itself. They complain instead of the injury caused by the Commonwealth's subsequent denial of compensation.

> The Takings Clause does not prohibit the government from taking private property; it prohibits the government from taking private property without just compensation. *Williamson County Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 194 (1985). A takings claim is not ripe for review unless a property owner is denied just compensation. *Id.* ... see also *Eide v. Sarasota County*, 908 F.2d 716, 721 (11th Cir. 1990) ("[A] Fifth Amendment just compensation claim is not ripe until the landowner has pursued the available state procedures to obtain just compensation."). Under this reasoning,

> "if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation." *Williamson*, 473 U.S. at 195.

Coles v. Granville, 448 F.3d 853, 860-861 (6th Cir. 2006).

Thus, the Willners had no Just Compensation claim when the Commonwealth took their property pursuant to the state-court judgment. Instead, the Willners were compelled to seek just compensation, which they did using the appropriate procedure - filing an inverse condemnation suit. When the Commonwealth refused the Willners' demand, their Just Compensation claim became ripe and they timely and properly filed suit in federal district court seeking relief from the violation of their federal constitutional rights.

Thus, while the "taking" of the Willners' property in the first instance was legal, the "keeping" of the Willners' property after the Commonwealth refused to provide compensation is illegal. Similarly, it was not the filing of the order in the land records by Frey that "injured" the Willners in a constitutional sense, it was his refusal to remove the order once the

Commonwealth denied them compensation, which is causing them injury today.[3]

While several other Circuits have focused on the injury prong of *Exxon*'s *Rooker-Feldman* analysis, their interpretations are much narrower than that applied by the Fourth Circuit in this case. In *Pittman v. Cuyahoga County Dep't of Children & Family Servs., supra*, the county department of family services ("CCDCFS") filed a motion in juvenile court for temporary custody of a father's child without considering the possibility of seeking custody for the father. The juvenile court awarded custody of the child to his great aunt and uncle. While fighting for custody in the state courts, the father sued the CCDCFS in federal court claiming it violated his Fourteenth Amendment due process rights. The district court held that *Rooker-Feldman*

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[3] Mr. Frey's act of maintaining an illegal order among the county land records represents a cloud on the Willners' title, thereby depriving them of a "significant interest requiring due process." See *Foltz v. St. Louis & S.F.R. Co.*, 60 Fed. 316, 320 (8th Cir. 1894) (judgment rendered under unconstitutional law is void); *Ambler v. Leach*, 15 W. Va. 677, 696 (W. Va. 1879)(void judgment is cloud upon title of real estate). *Connecticut v. Doehr*, 501 U.S. 1, 11 (1991) (attachment resulting in cloud on title to property affects significant interest requiring due process); *Terranova v. AVCO Financial Services, Inc.*, 396 F.Supp. 1402, 1407 (D.Vt. 1975) (attachment "impairs the market value and marketability or mortgageability of the real estate [and] cannot be viewed as 'insignificant' deprivations in a constitutional sense."). Furthermore, continuing to maintain the order in the land records after the Commonwealth denied the Willners compensation is not comparable to a judicial act – no court has told Frey to continue to maintain the order in the land records after it became illegal to do so.

deprived it of subject matter jurisdiction, but the Sixth Circuit reversed.

In determining that the federal case was not, in substance, an appeal of the state court judgment, the Sixth Circuit opined:

> In the wake of *Exxon*, this circuit has tightened the scope of *Rooker-Feldman*... In formulating a cogent post-*Exxon* analysis, we have distinguished between plaintiffs who bring an impermissible attack on a state court judgment -- situations in which *Rooker-Feldman* applies -- and plaintiffs who assert independent claims before the district court -- situations in which *Rooker-Feldman* does not apply... In delineating this distinction, we noted: The inquiry [focuses on] the source of the injury the plaintiff alleges in the federal complaint. If the source of the injury is the state court decision, then the *Rooker-Feldman* doctrine would prevent the district court from asserting jurisdiction. If there is some other source of injury, such as a third party's actions, then the plaintiff asserts an independent claim...

Pittman, supra, 2007 U.S. App. LEXIS 17388 at 6-7 (citations omitted).

The main difference between the Sixth Circuit's interpretation of the injury clause and the Fourth Circuit's in this case, is the express inapplicability of *Rooker-Feldman* when a federal plaintiff raises an independent claim of injury caused by a third party's actions and not by the state-court judgment itself. In the present case, there certainly is "some other source of injury, such as a third party's actions." The Commonwealth was not a party in *Fairfax I* and its subsequent denial of compensation formed the basis for the Willners' Just Compensation claim, not the taking of their property pursuant to the state-court judgment.

The First and Second Circuits have similarly interpreted the "injury" prong of the *Rooker-Feldman* test: *Francis v. City of New York*, 197 Fed. Appx. 26, 29 (2d Cir. 2006) ("Appellants have not petitioned the federal court to undo the state court's [decision]; rather, they have asserted an independent claim."); *Davison v. Gov't of P.R. - P.R. Firefighters Corps*, 471 F.3d 220, 222-223 (1st Cir. 2006) ("... the lower courts cannot rely on *Rooker-Feldman* to dismiss a case unless, *inter alia*, the federal plaintiff seeks redress of an injury caused by an allegedly erroneous state court decision; if the plaintiff alleges a constitutional violation by an adverse party independent of the injury caused by the state court judgment, the doctrine does not bar jurisdiction.")

In these Circuits, dismissal of the Willners' claim under *Rooker-Feldman* would have been reversed. In fact, if the Fourth Circuit had followed its own precedent or had not created an exception to its

injury-based *Rooker-Feldman* test, it too would have reversed the district court's dismissal of the Willners' suit. The Fourth Circuit in *Davani* recognized that *Rooker-Feldman* did not bar a case that complained of injuries caused by a third party, as opposed to injuries caused by the state-court judgment itself. The court explained that in a pre-*Exxon* case:

> ... we extended the *Rooker-Feldman* doctrine to apply in situations where the plaintiff, after losing in state court, seeks redress for an injury allegedly caused by the defendant's actions. What is more, this expansive view of the *Rooker-Feldman* doctrine carried with it implications for *Feldman*'s "inextricably intertwined" language. To wit, by shifting the focus from an examination of whether the plaintiff challenges the state-court decision itself to whether the plaintiff challenges the defendant's actions, our interpretation of the *Rooker-Feldman* doctrine became, in essence, a jurisdictional doctrine of *res judicata*: state-court losers became precluded from raising claims in federal district court that they had either already raised before the state court or that were so "inextricably intertwined" with the claims they presented to the state court that the federal claims could have been raised in the state proceedings.

Davani v. Va. DOT, supra, 434 F.3d at 717-718. The court concluded, "Because Davani's suit does not challenge the state court's decision, and it instead seeks redress for an injury allegedly caused by Appellees, the *Rooker-Feldman* doctrine does not apply." *Id.* at 713. See also the Fourth Circuit's decision in *Washington v. Wilmore, supra,* where it held that *Rooker-Feldman* did not bar jurisdiction where the plaintiff's "claim of injury rests not on the state court judgment itself, but rather on the alleged violation of his constitutional rights by [defendant]." 407 F.3d at 280.

Furthermore, if a third party's actions are not "produced" by a state-court judgment, the plaintiff's claim of injury is independent of the judgment. *Hoblock v. Albany County Bd. of Elections, supra,* 422 F.3d at 88. In the present case, while the state judgment ordered the Commonwealth to take the Willners' title to the Disputed Property, it did not order the Commonwealth to deny the Willners' just compensation.

If the Fourth Circuit had applied this reasoning to the present case, it would have reversed the district court's dismissal because the Willners' Just Compensation claim does not rest on the state court judgment itself, but rather on the alleged violation of their constitutional rights by the Commonwealth. To reach its erroneous decision in this case the Fourth Circuit essentially created the following exception to the analysis it and other Circuits have applied to the "injury" requirement of *Exxon*'s *Rooker-Feldman* test, *i.e.*, *Rooker-Feldman* does not apply if a plaintiff complains of an injury caused by a

third party and not the state-court judgment itself, *unless plaintiff seeks to undo the relief granted by the state court.* This exception must be rejected because it broadens the scope of *Rooker-Feldman* contrary to this Court's directives in *Exxon* and *Lance* and does not describe what would be, in substance, an appeal.

CONCLUSION

The Circuits are not applying the *Rooker-Feldman* doctrine consistently and individuals whose civil rights are being violated by state officials are suffering the consequences. Some of the Circuits apply an appropriately narrow merits-based approach barring jurisdiction only if a federal plaintiff's claim seeks to adjudicate the merits of a state court case. This is the proper way to interpret the "review and rejection" clause of *Exxon*'s *Rooker-Feldman* test because it is the essence of an appeal. Other circuits focus on the "injury" clause to bar jurisdiction where a plaintiff complains of an injury caused by a state-court judgment itself and does not raise an independent claim of injury caused by the actions of a third party. Under either of these approaches, the Willners' claim would not have been dismissed.

Unfortunately, some Circuits, including the Fourth Circuit in this case, interpret *Rooker-Feldman* broadly to bar jurisdiction over federal claims which seek to undercut the relief granted by a state court, even if the federal claim was not adjudicated in state court and does not challenge the state-court judgment on the merits. The problem with this expansive approach is that it ignores the

doctrine's *raison d'etre, i.e.*, preventing federal courts from hearing claims which are, in substance, appeals of state-court judgments. Where a federal suit does not seek to reverse a state court's rulings on the merits, but seeks only to protect an individual's federal rights by effectively undoing the relief granted by a state court applying state law, the plaintiff is not seeking appellate review and, therefore, *Rooker-Feldman* does not bar jurisdiction.

The Willners' federal suit does not effectively seek appellate review of a state-court judgment because the state case did not address their Just Compensation claim – a claim which did not become ripe until the Commonwealth denied them compensation long after the state-court judgment in *Fairfax I* became final. Thus, the Willners do not seek rejection of any issues adjudicated by the state court. Nor do they seek relief from an injury caused by the state court judgment itself because, as a matter of law, the constitutional injury of which they complain was the denial of compensation, not the taking of their property.

This case presents an excellent opportunity for this Court to effectively sever *Feldman* from the *Rooker-Feldman* doctrine, as Justice Stevens suggests, by abandoning the "inextricably intertwined" analysis while also clarifying the "review and rejection" prong of the *Rooker-Feldman* test by defining it to require review and rejection of a state-court's judgment on the merits, not just the relief granted thereunder.

For the reasons stated, the Court should grant the petition.

Respectfully submitted,

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November 20, 2007

Appendix A

MARGUERITE EVANS WILLNER; MICHAEL A. WILLNER, Plaintiffs - Appellants, versus

JOHN T. FREY, Clerk, Fairfax County Circuit Court, Defendant - Appellee, COMMONWEALTH OF VIRGINIA, Intervenor.

No. 06-1432

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

2007 U.S. App. LEXIS 18514

July 31, 2007, Submitted
August 3, 2007, Decided

NOTICE: PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

PRIOR HISTORY: [*1]

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. T. S. Ellis, III, District Judge. (1:05-cv-01315-TSE).
Willner v. Frey, 421 F. Supp. 2d 913, 2006 U.S. Dist. LEXIS 11379 (E.D. Va., 2006)

DISPOSITION: AFFIRMED.

COUNSEL: Richard E. Gardiner, Fairfax, Virginia, for Appellants.

Jack L. Gould, Fairfax, Virginia, for Appellee.

Robert F. McDonnell, Attorney General of Virginia, William E. Thro, State Solicitor General, Stephen R. McCullough, Deputy State Solicitor General, William C. Mims, Chief Deputy Attorney General, OFFICE OF THE ATTORNEY GENERAL, Richmond, Virginia, for the Commonwealth of Virginia, Intervenor.

JUDGES: Before WILLIAMS, Chief Judge, and MICHAEL and GREGORY, Circuit Judges.

OPINION

PER CURIAM:

The appellants, Marguerite and Michael Willner, brought this action in federal court after losing a

portion of their real property in adverse possession litigation in state court. The district court dismissed the Willners' complaint, holding that it did not have jurisdiction as a result of the *Rooker-Feldman* doctrine. We affirm.

I.

In 1989 the Willners acquired title to approximately eleven acres along the Potomac River in Fairfax County, Virginia. In 2002 the Willners' neighbor, Eugene Leggett, brought an ejectment action pursuant to *Va. Code § 8.01-236* in [*2] the Fairfax County Circuit Court (*Fairfax I*), alleging that he had acquired an ownership interest in a portion of the Willners' property through adverse possession. The state court determined that Leggett had satisfied the elements of adverse possession and ordered title of the disputed land transferred to Leggett. John T. Frey, the Clerk of the Fairfax County Circuit Court, recorded the court's final order in the county's land records. The Willners' petition for appeal to the Supreme Court of Virginia was denied.

The Willners then filed a civil suit in Fairfax County Circuit Court against the Commonwealth of Virginia (*Fairfax II*). The complaint alleged that the Commonwealth took their property for a private use and without compensation and that the taking deprived them of due process of law, in violation of *Article I, § 11 of the Virginia Constitution*. The complaint also stated that the Willners "reserve the

right to all claims over which subject matter presently lies, or which may later become ripe, in the courts of the United States." J.A. 9. The Fairfax County Circuit Court dismissed the complaint with prejudice, holding that Virginia's adverse possession law did not violate [*3] the Virginia Constitution. The court refused "to comment on any federal implications." J.A. 48c.

The Willners then moved to suspend or vacate the state court judgment in *Fairfax II* while they pursued their federal takings and due process claims in federal court, or in the alternative, for leave to amend their complaint to include federal claims. The Fairfax County Circuit Court denied the motion. The Willners appealed to the Supreme Court of Virginia.

Two days before filing the notice of appeal to the Virginia Supreme Court, the Willners filed this action in the U.S. District Court for the Eastern District of Virginia against John Frey, the Fairfax County Circuit Clerk. The Willners sought (1) a declaration that the disputed property was taken by Frey, acting in his official capacity, in violation of the *Takings Clause of the Fifth* and *Fourteenth Amendments of the Constitution of the United States*; (2) a declaration that *Va. Code § 8.01-236*, as applied to the Willners, violated their right to due process and equal protection under the *Fourteenth Amendment*; and (3) an injunction directing Frey to remove the final order in *Fairfax I* from the land records of Fairfax County.

The district [*4] court dismissed the Willners' complaint, holding that the *Rooker-Feldman* doctrine prevented the court from exercising subject matter jurisdiction. It held in the alternative that the Willners' claim for relief was barred by the Commonwealth of Virginia's sovereign immunity and by Frey's derivative absolute judicial immunity. The Willners filed a timely appeal, and we review the district court's dismissal for lack of jurisdiction de novo, *see Davani v. Va. DOT, 434 F.3d 712, 715 (4th Cir. 2006).*

II.

The *Rooker-Feldman* doctrine "prevents 'a party losing in state court . . . from seeking what in substance would be appellate review of the state judgment in a United States district court.'" *Henrichs v. Valley View Dev., 474 F.3d 609, 611 (9th Cir. 2007)* (quoting *Johnson v. De Grandy, 512 U.S. 997, 1005-06, 114 S. Ct. 2647, 129 L. Ed. 2d 775 (1994)).*[1] District courts cannot review final state court judgments because Congress has vested appellate jurisdiction over state court decisions with the United States Supreme Court. *See 28 U.S.C. § 1257(a).* Thus, a party seeking review of a state court

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[1] The *Rooker-Feldman* doctrine is named after two Supreme Court cases, *Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923),* and *District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983).*

decision must first appeal to the highest court of the state and then seek a writ of certiorari from the United States [*5] Supreme Court. The *Rooker-Feldman* doctrine prevents losers in state court from bypassing this appeal process by seeking review in federal district court.

The Supreme Court has recently narrowed the scope of the doctrine, holding that it applies only when the following conditions are met: (1) the federal court plaintiff lost in state court; (2) the plaintiff complains of "injuries caused by state-court judgments;" (3) the state court judgment became final before the proceedings in federal court commenced; and (4) the federal plaintiff "invit[es] district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005); see also Lance v. Dennis, 546 U.S. 459, 126 S. Ct. 1198, 1201, 163 L. Ed. 2d 1059 (2006)* (emphasizing the "narrowness" of the doctrine). *Rooker-Feldman* does not apply when the plaintiff alleges a constitutional violation independent of the injury caused by the state court judgment. *Davani, 434 F.3d at 718-19; Davison v. Gov't of P.R. - P.R. Firefighters Corps, 471 F.3d 220, 222 (1st Cir. 2006).*

The [*6] district court correctly concluded that *Rooker-Feldman* bars jurisdiction in this case. First, the plaintiffs (the Willners) lost in the *Fairfax I* state court proceeding. Second, the alleged injury, the unconstitutional taking of their property, was caused by the *Fairfax I* judgment. *See* J.A. 33 (alleging that

"title to the [Willners' property] has been coercively transferred by the State from the Willners to the Leggetts not for a public use"). Third, the *Fairfax I* decision became final before the proceedings were commenced in district court. Finally, the Willners' complaint in federal court would require "re-examination of the Fairfax County Circuit Court's application of the statute [*Va. Code § 8.01-236*] in *Fairfax I*." J.A. 18.

The Willners urge us to construe their federal complaint as raising an independent claim that would not be barred by *Rooker-Feldman*. They assert that their claim is "based on a violation of their constitutional rights by Frey and the consequence of the state court judgment -- not the state court judgment itself." Appellants' Br. at 13. The Willners argue that their "complaint cannot reasonably be construed as inviting the district court to reject the state court [*7] judgment" because the state court did not rule on the issue raised in district court. *Id.* at 15.

These arguments are without merit. "[A] federal plaintiff cannot escape the *Rooker-Feldman* bar simply by relying on a legal theory not raised in state court." *Hoblock v. Albany County Bd. of Elections, 422 F.3d 77, 87 (2d Cir. 2005)*; *see also Davani, 434 F.3d at 719* (stating that *Rooker-Feldman* applies "even if the state-court loser did not argue to the state court the basis of recovery that he asserts in the federal district court"). In addition to direct challenges to state court judgments, the

Rooker-Feldman doctrine prevents plaintiffs from raising issues in federal court that are so "inextricably intertwined" with a state court judgment that they would require the district court to review the state court's ruling. *District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 n.16, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983).* As this court recently explained, the key inquiry is not whether the state court ruled on the precise issue raised in federal court, but whether the "state-court loser who files suit in federal court seeks redress for an injury caused by the state-court decision itself." *Davani, 434 F.3d at 718.* [*8] Here, the Willners state that they were injured because the *Fairfax I* court applied Virginia's statute on adverse possession in a way that resulted in an unconstitutional taking of their property. Indeed, the relief requested, an injunction ordering Frey to remove the state court's final order from the county's land records, leaves little doubt that the Willners want the district court to reverse the state court's judgment.

The Willners' argument that the injury was caused by Frey, not the state court, is also meritless. "[I]f a third party's actions are the product of a state court judgment, then a plaintiff's challenge to those actions are in fact a challenge to the judgment itself." *McCormick v. Braverman, 451 F.3d 382, 394 (6th Cir. 2006).* The state court's issuance of the final order in *Fairfax I* triggered Frey's duty to enter that order in the county's land records. The Willners thus complain of an injury caused by the state court. *See*

also McKithen v. Brown 481 F.3d 89, 97 (2d Cir. 2007) ("[A] federal suit complains of injury from a state-court judgment, even if it appears to complain only of a third party's actions, when the third party's actions are produced by a state-court [*9] judgment.").

In sum, the district court correctly determined that it lacked jurisdiction over the Willners' claim that the state court's judgment violated their constitutional rights. Accordingly, we do not consider the district court's alternate holdings that the Willners' claim was barred by the Commonwealth's sovereign immunity and by Frey's derivative absolute judicial immunity. The district court's order dismissing the Willners' federal complaint is

AFFIRMED.

Appendix B

JUDGMENT

FILED: August 3, 2007

UNITED STATES COURT OF APPEALS

for the

Fourth Circuit

No. 06-1432
1:05-cv-01315-TSE

MARGUERITE EVANS WILLNER; MICHAEL A. WILLNER

Plaintiffs - Appellants

v.

JOHN T. FREY, Clerk, Fairfax County Circuit Court;

Defendant - Appellee

COMMONWEALTH OF VIRGINIA

Intervenor

Appeal from the United States District Court for the Eastern District of Virginia at Alexandria

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In accordance with the written opinion of this Court filed this day, the Court affirms the judgment of the District Court. A certified copy of this judgment will be provided to the District Court upon issuance of the mandate. The judgment will take effect upon issuance of the mandate.

/s/ Patricia S. Connor

CLERK

Appendix C

MARGUERITE EVANS WILLNER, MICHAEL A. WILLNER, Plaintiffs, v. JOHN T. FREY, Defendant.

Case No. 1:05cv1315

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION

421 F. Supp. 2d 913; 2006 U.S. Dist. LEXIS 11379

March 15, 2006, Decided

COUNSEL: [**1] For Marguerite Evans Willner, Plaintiff: Richard E. Gardiner, Fairfax, VA.

Michael A. Willner, Plaintiff, Pro se, Mason Neck, VA US.

For John T. Frey, Clerk, Fairfax County Circuit Court, Defendant: Jack Lewis Gould, Fairfax, VA.

JUDGES: T. S. Ellis, III, United States District Judge.

OPINION BY: T. S. Ellis, III

OPINION:

[*916] MEMORANDUM OPINION

Plaintiffs are landowners who lost a portion of their property in a state adverse possession litigation and now seek to recover that property by claiming in this case that Virginia's law of adverse possession, as applied to them in the earlier state case, violated the *Takings Clause of the Fifth Amendment*, and the *Due Process and Equal Protection Clauses of the Fourteenth Amendment.* Plaintiffs' effort to recover that property in this suit fails for a variety of reasons.

[*917] I.

This dispute began over a piece of land located in Mason Neck, Virginia on the banks of the Potomac River. In 1989, the plaintiffs, Michael and Marguerite Willner, purchased an eleven acre tract of land in Fairfax County on which they built their home. Three years later Sheldon Leggett purchased an adjacent parcel of land. On August 13, 2002 Leggett and his wife **[**2]** filed suit against the

Willners in the Circuit Court for Fairfax County (hereinafter referred to as *Fairfax I*) claiming that the Leggetts and their predecessors in title had continuously, visibly, and adversely possessed a portion of the Willners' land for a period of more than 15 years, and therefore were entitled to the land under the law of adverse possession, as codified at *Virginia Code § § 8.01-131* and *8.01-236.*[1]

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[1] The Virginia Code incorporates the common law in *§ 8.01-131* which provides, in pertinent part, that:

> A. The action of ejectment is retained, subject to the provisions hereinafter contained, and to the applicable Rules of Court.
> B. Such action may be brought in the same cases in which a writ of right might have been brought prior to the first day of July, 1850, and by any person claiming real estate in fee or for life or for years, either as heir, devisee or purchaser, or otherwise.

The statute of limitations is derived from *Va. Code § 8.01-236*, which provides, in pertinent part, that:

> No person shall make an entry on, or bring an action to recover, any land unless within fifteen years next after the time at which the right to make such entry or bring such action shall have first accrued to such person or to some other person through whom he claims; provided that an action for unlawful entry or detainer under § 8.01-124 shall be brought within three years after such entry or detainer.

Fairfax I proceeded under the well-settled Virginia legal principle that "to establish title to real property by adverse possession, a claimant must prove actual, hostile, exclusive, visible, and continuous possession, under a claim of right, for the statutory period of 15 years." *Quatannens v. Tyrrell, 268 Va. 360, 368, 601 S.E.2d 616, 620 (2004)* (quoting *Grappo v. Blanks, 241 Va. 58, 61-62, 400 S.E.2d 168, 170-71, 7 Va. Law Rep. 1293 (1991)).* At no time during *Fairfax I* did the Willners raise, plead, or argue that Virginia's law of adverse possession was unconstitutional for any reason. On March 26, 2004, after a seven day bench trial, the Fairfax County Circuit Court judge found that the Leggetts had satisfied their **[**3]** burden of proving the elements of adverse possession by clear and convincing evidence, and accordingly ordered title to the disputed land transferred to the Leggetts. *Leggett v. Willner,* Law No. 206590 (Cir. Ct. Fairfax Va. 2004). Thereafter, the defendant, John T. Frey, acting in his official capacity as the Clerk of the Fairfax County Circuit Court, recorded the Final Order in the land records of Fairfax County.

[4]**

On June 24, 2004, the Willners appealed this decision to the Supreme Court of Virginia, which denied the Willners' petition for appeal. *Leggett v. Willner,* Law No. 206590 (Cir. Ct. Fairfax Va. 2004), *pet. for appeal denied, Willner v. Leggett,* R. 041476 (Va. 2004). On November 17, 2004, the Willners' petition for rehearing was likewise denied. *Leggett v.*

Willner, Law No. 206590, (Cir. Ct. Fairfax Va. 2004), *pet. for rehearing denied, Willner* v. Leggett, R. 041476 (Va. 2004).

After they had exhausted their appeal in *Fairfax I*, the underlying adverse possession case, the Willners filed a second civil suit in the Fairfax County Circuit Court (hereinafter referred to as *Fairfax II*), this time against the Commonwealth of Virginia, challenging Virginia's law of adverse possession on state constitutional grounds. The Willners' motion for judgment **[*918]** in *Fairfax II*, filed on July 5, 2005, contained three counts:

1. Count One alleged that the Commonwealth of Virginia, through the operation of *Va. Code § 8.01-236*, had taken the Willners' property for public use without just compensation in violation of **[**5]** *Article I, § 11 of the Virginia Constitution*, and that the Willners were thereby entitled to just compensation.

2. Count Two alleged in the alternative that the property had been taken for private use in violation of *Article I, § 11 of the Virginia Constitution*.

3. Count Three of the Willners' motion for judgment alleged that the law of adverse possession, as applied to the Willners, deprived them of property without

due process of law in violation of *Article I, § 11 of the Virginia Constitution.*[2]

Nor did the Willners overlook any corresponding potential federal constitutional claims; to the contrary, they explicitly declined to assert any such claims in *Fairfax II,* claiming they were entitled to reserve the right to bring such claims in federal court. Specifically, the motion for judgment in *Fairfax II,* under the heading "Reservation **[**6]** of Jurisdiction," stated as follows:

> The Willners have rights guaranteed to them including, but not limited to, those protections guaranteed to them under the *just compensation and due process clauses of the Fifth* and *Fourteenth Amendments of the United States Constitution,* rights which have been violated by Defendant as a result of actions set forth herein. The Willners reserve the right to all claims over which subject matter presently lies, or which may later become ripe, in the courts of the United States.

In response to this motion for judgment, the Commonwealth filed a demurrer,[3] arguing that the

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[2] The Due Process Clause contained in Article I, § 11 of the Virginia Constitution, provides that "no person shall be deprived of his life, liberty, or property without due process of law. . . ."

[3] A demurrer is the Virginia procedural analog to Rule 12(b)(6), Fed.R.Civ.P. See *Southern Ry. Co. v. Darnell,* 221 Va. 1026, 1029 n.2, 277 S.E.2d 175, 177 n.2 (1981) ("The only issue at the

Commonwealth's resolution of a property dispute between two private parties pursuant to *Va. Code § 8.01-236* violates neither the Virginia Constitution nor the U.S. Constitution, and that the statute had provided ample due process to the Willners. During oral argument on the demurrer, the Fairfax County Circuit Court orally sustained the Commonwealth's demurrer, but specifically refused the Commonwealth's request to rule on the federal claims the Willners sought to reserve for a later day in federal court.[4] On September 15, 2005, the Fairfax **[**7]** County Circuit Court issued a formal Order sustaining the Commonwealth's demurrer and dismissing *Fairfax II* with prejudice.

On September 27, 2005, the Willners filed a motion to suspend the Final Order in *Fairfax II* or, in the alternative, to vacate the Final Order and grant leave to amend the motion for judgment. More specifically, citing the United States Supreme Court's recent opinion in *San Remo Hotel, L.P. v. City & County of San Francisco, 545 U.S. 323, 125 S.Ct. 2491, 2497, 162 L. Ed. 2d 315 (2005)* (holding that federal takings claims reserved in state court **[**8]** proceedings are subject to the principles of res judicata and collateral estoppel, **[*919]** and not reviewed in federal court *de novo*), the Willners

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demurrer stage is whether the plaintiff has stated a cause of action.").

[4] *See* Hearing Transcript, 9/2/05, p.20 (Va. Cir. Ct., Fairfax County) ("I'm not going to comment on any federal implications.").

sought to suspend the September 15, 2005 Order in order to allow them to pursue their federal claims in federal court. In the alternative, the Willners sought an amendment to their motion for judgment that would allow them to add to *Fairfax II* their claims under the *Fifth* and *Fourteenth Amendments of the United States Constitution*. On November 4, 2005, the Fairfax County Circuit Court denied the Willners' motion to suspend or vacate the Final Order. *See Marguerite Evans Willner v. Commonwealth of Virginia*, Law No. 05-4075 (November 4, 2005). It also denied the proposed amendments to the motion for judgment because it viewed the proposed amendments as futile. *Id.* On November 18, 2005, the Willners appealed this decision to the Supreme Court of Virginia. This appeal is pending.[5]

[9]**

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[5] Surprisingly, neither the complaint in this case, nor any pleading filed by, or on behalf of the Willners in this case, disclosed the existence of *Fairfax II*. Nor did the Willners' counsel cite or call attention to the Supreme Court's decision in *San Remo Hotel, L.P. v. City and County of San Francisco*, California, 125 S.Ct. 2491, 162 L. Ed. 2d 315 (2005), which the Willners were aware was potentially controlling in this case, as they cited it in their motion for reconsideration after the adverse ruling in *Fairfax II*. Although there is no reason to conclude that counsel in this case intentionally misled the Court, it is important to avoid even an inference of a failure to make full disclosure of relevant proceedings and potentially controlling precedent as "there are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation." *See* Va. Code of Professional Conduct § 3.3(a)(1), Comment 1.

Two days before filing the notice of appeal to the Supreme Court of Virginia, the Willners filed the instant federal complaint naming as defendant John T. Frey, the clerk of the Fairfax County Circuit Court, acting in his official capacity. This complaint contains three counts:

1. Count One seeks a declaration pursuant to *28 U.S.C. § 2201* [6] that the disputed property was taken by Frey, acting in his official capacity, in violation of the *Takings Clause of the Fifth* and *Fourteenth Amendments of the U.S. Constitution*, and an injunction pursuant to *42 U.S.C. § 1983* and *28 U.S.C. § 2202* [7] directing Frey to remove the Final Order in *Fairfax I* from the land records of Fairfax County.

2. Count Two of the complaint seeks a declaration that *Va. Code § 8.01-236*, as-applied to the Willners,

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[6] 28 U.S.C. § 2201 provides:

[HN1] In a case of actual controversy within its jurisdiction . . ., any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.
[**11]

[7] 28 U.S.C. § 2202 provides:

[HN2] Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

violates the *Due Process Clause of the Fourteenth Amendment of the U.S. Constitution* and the same injunctive relief.

3. Count Three seeks a declaration that *Va. Code § 8.01-236* violated the Willners' rights under the *Equal Protection Clause of the Fourteenth Amendment of the United States Constitution* **[**10]** because:

> while the Willners forfeited the title to the disputed property for failure to eject the Leggetts and their predecessors in title from their claim of ownership to the disputed property within 15 years of the accrual of the Willners' right to do so, the Leggetts and their predecessors in title were not equally **[*920]** in jeopardy of losing title to the disputed property for failing to eject the Willners from their claim of ownership within 15 years of the cause of action accruing in the Leggetts and their predecessors in title.

Complaint P54. As in the other two counts, the Willners also seek an injunction in this count pursuant to *28 U.S.C. § 2202* and *42 U.S.C. § 1983*,

directing Frey to remove the Final Order from the land records of Fairfax County.

Frey's motion to dismiss pursuant to *Rule 12(b)(6)* has been fully briefed and argued and is now ripe for disposition.

II.

Frey raises several potentially dispositive non-merits defenses to the Willners' federal complaint. First, he argues that principles of res judicata bar the Willners from rearguing in federal court issues already resolved in the state courts. In the alternative, he argues that the Willners' complaint is, in essence, an attempt to seek appellate review of a state court decision in a federal district court in contravention of the *Rooker-Feldman* doctrine. *See Exxon Mobil Corp. v. Saudi Basic Industries, 544 U.S. 280, 125 S.Ct. 1517, 1521, 161 L. Ed. 2d 454 (2005).* Finally, Frey also contends that he is entitled to sovereign immunity and derivative absolute judicial immunity. These defenses are addressed seriatim.

A. Res Judicata

The starting point in considering the preclusive effects of *Fairfax I* [**12] and *Fairfax II* is the recognition that [HN3] a federal court is bound by *28 U.S.C. § 1738* to abide by principles of res judicata and collateral estoppel.[8] And, "it has long been

[8] Article IV, § 1, of the United States Constitution demands that [HN4] "Full Faith and Credit shall be given in each State

established that *§ 1738* does not allow federal courts to employ their own rules of res judicata in determining the effect of state judgments. Rather, it goes beyond the common law and commands a federal court to accept the rules chosen by the state from which the judgment is given." *Marrese v. American Academy of Orthopaedic Surgeons, 470 U.S. 373, 380, 105 S. Ct. 1327, 84 L. Ed. 2d 274 (1985)* (quoting *Kremer v. Chemical Construction Corp., 456 U.S. 461, 481-482, 102 S. Ct. 1883, 72 L. Ed. 2d 262 (1982)).* Because the prior judgments in *Fairfax I* and *Fairfax II* are from the Fairfax County Circuit Court, Virginia principles of res judicata apply here with respect to both.

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to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof." Congress accepted this invitation to codify the Full Faith and Credit Clause in 1790, and it "has existed in essentially unchanged form since its enactment. . . ." *Allen v. McCurry*, 449 U.S. 90, 96 n.8, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980). In its current form, the statute provides that [HN5] "judicial proceedings . . . shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State. . . ." 28 U.S.C. § 1738. As the Supreme Court has recently reaffirmed, [HN6] "this statute has long been understood to encompass the doctrines of res judicata, or 'claim preclusion,' and collateral estoppel, or 'issue preclusion.'" *San Remo Hotel, L.P. v. City and County of San Francisco*, California, 125 S.Ct. 2491, 2500, 162 L. Ed. 2d 315 (2005) (citing *Allen v. McCurry*, 449 U.S. 90, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980)).

[13]** The preclusive effect of the judgment in *Fairfax I* depends on the breadth of res judicata under Virginia law. According to some formulations, res judicata precludes "parties or their privies from relitigating issues that were or could have been raised in that action." *Allen v.* **[*921]** *McCurry, 449 U.S. 90, 95, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980).* Under this broad formulation of the doctrine, the Willners would be precluded from bringing this suit since they could have challenged the constitutionality of Virginia's adverse possession statute as a defense to the original ejectment action by the Leggetts. *See San Remo, 125 S.Ct. at 2507.* Yet, this formulation does not govern here, as the doctrine of res judicata is considerably narrower under the decisions of the Supreme Court of Virginia. As that Court has stated:

> [HN7] Four elements must be present before res judicata can be asserted to bar a subsequent proceeding: (1) identity of the remedies sought; (2) identity of the cause of action; (3) identity of the parties; and (4) identity of the quality of the persons for or against whom the claim is made.

Smith v. Ware, 244 Va. 374, 376, 421 S.E.2d 444, 445, 9 Va. Law Rep. 308 (1992). **[**14]**

Under this more restrictive formulation of the res judicata doctrine, *Fairfax I* does not preclude the Willners from bringing this lawsuit against the Commonwealth. A comparison of *Fairfax I* with this suit confirms this conclusion. There is no identity of parties, causes of actions, or remedies sought. In *Fairfax I,* the Willners were defendants in an ejectment action brought by the Leggetts pursuant to the law of adverse possession. In this case, the Willners sue an official of the Commonwealth of Virginia for abrogation of their federal constitutional rights, and seek declaratory and injunctive relief. Thus, while the Willners could have argued their federal constitutional claims as a defense in *Fairfax I,* their failure to do so does not foreclose this lawsuit under Virginia's law of res judicata.

The same result obtains with regard to *Fairfax II,* but for a different reason. [HN8] Virginia law provides that the preclusive effect of res judicata and collateral estoppel do not apply to a prior judgment until that judgment is final. *See Norris v. Mitchell, 255 Va. 235, 239-40, 495 S.E.2d 809, 812 (1998).* In determining finality, Virginia is among those **[**15]** states that do not afford preclusive effect to a judgment when the judgment is the subject of a pending appeal. *See Faison v. Hudson, 243 Va. 413, 419, 417 S.E.2d 302, 305, 8 Va. Law Rep. 2754 (1992)* ("[A] judgment is not final for the purposes of res judicata or collateral estoppel when it is being appealed or when the time limits fixed for perfecting

the appeal have not expired."); *Arkansas Best Freight System, Inc. v. H.H. Moore, 244 Va. 304, 307, 421 S.E.2d 197, 198, 9 Va. Law Rep. 271 (1992).* Because the record currently reflects that the Willners' notice of appeal to the Supreme Court of Virginia, filed on November 18, 2005, remains pending, the dismissal of the Willners' Virginia constitutional claims by the Fairfax County Circuit Court has no preclusive effect on the instant case.[9]

[16]**

B. The *Rooker-Feldman* Doctrine

[HN9] The *Rooker-Feldman* doctrine is a jurisdictional bar to federal district court review of state court judgments, and is **[*922]** based on the Supreme Court's exclusive appellate jurisdiction over such judgments. *See Exxon Mobil Corp. v. Saudi Basic Industries, 544 U.S. 280, 125 S.Ct. 1517, 1521, 161 L. Ed. 2d 454 (2005)* (citing *28 U.S.C. § 1257*); *District of Columbia Court of*

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[9] Because the *Fairfax II* judgment is not final, it is unnecessary to consider the effect, if any, of the Willners' attempt to reserve their federal claims. Had the judgment in *Fairfax II* been final, it is unlikely the Willners' reservation would have been effective to avoid the preclusive effects of that judgment. *See Bill Greever Corp. v. Tazewell National Bank*, 256 Va. 250, 258, 504 S.E.2d 854, 859 (1998) (holding that only the defendant may waive the effect of res judicata). *See also, San Remo Hotel, L.P. v. City and County of San Francisco, California*, 125 S.Ct. 2491, 2502, 162 L. Ed. 2d 315 (2005) (describing the narrow circumstances in which a party may reserve federal claims in state courts).

Appeals v. Feldman, 460 U.S. 462, 476, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983); *Rooker v. Fidelity Trust Co., 263 U.S. 413, 416, 44 S. Ct. 149, 68 L. Ed. 362 (1923)*. As recently explicated by the Supreme Court, the *Rooker-Feldman* doctrine operates only in a narrow set of circumstances, namely: "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil, 125 S.Ct. at 1521-22*. Furthermore, the doctrine does not deprive federal district courts jurisdiction over a matter that has already been litigated in state court as long as a federal plaintiff "presents some independent claim." *Exxon Mobil, 125 S.Ct. at 1527* **[**17]** (quoting *Gash Assocs. v. Vill. of Rosemont, 995 F.2d 726, 728 (7th Cir. 1993)*). Because the *Exxon-Mobil* decision involved parallel litigation, the Supreme Court did not explain what constitutes an "independent claim," nor did it specifically address the precise question presented here, namely, whether parties who lost a state court judgment can seek reversal of that judgment in federal court by mounting an as-applied constitutional challenge to the statute pursuant to which the state court judgment was issued. Although the Supreme Court has not specifically addressed this question, the answer is nonetheless apparent from existing authority.

Particularly instructive on this question is *District of Columbia Court of Appeals v. Feldman,*

460 U.S. 462, 476, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983), one of the cases from which the *Rooker-Feldman* doctrine derives its name. In *Feldman*, the Supreme Court addressed whether federal district court plaintiffs could challenge their exclusion from the District of Columbia bar by decision of the District of Columbia Court of Appeals pursuant to the local bar admission rule. *Feldman, 460 U.S. at 465*. That rule prohibited [**18] the admission of lawyers, like the *Feldman* plaintiffs, who had not graduated from an accredited law school. *Id.* The *Feldman* plaintiffs challenged in federal district court both the failure of the District of Columbia courts to grant a waiver of the rule (as was the common practice), and the constitutionality of the bar admission rule itself. *Id. at 472-73*. In deciding whether the district court had jurisdiction over their claims, the Supreme Court examined the "difference between seeking review in a federal district court of a state court's final judgment . . . and challenging the validity of [the rule itself]." *Id. at 483-84*. The Supreme Court held that the district court did not have jurisdiction over whether the state court had acted arbitrarily and capriciously in refusing to grant a waiver, but did have jurisdiction over a facial constitutional challenge to the rule. *Id. at 486-87*. As the opinion makes clear, this distinction was based on the fact that review of the refusal to grant the waiver would require review of a judicial act, whereas a facial challenge to the rule required review of a legislative act. *Id.* [**19]

The rationale of *Feldman* makes clear that [HN10] the question whether the Willners may bring their claims in federal district court depends on whether their challenge to Virginia's adverse possession statute is facial or as-applied. If the former, then it may proceed, because the plaintiffs would then be challenging an act of the Virginia state legislature. But if the **[*923]** latter, then it is barred by the *Rooker-Feldman* doctrine because the constitutional challenge is "inextricably intertwined" with the state court's judgment. *Feldman, 460 U.S. at 486-87.* In this regard, it is not necessary for the state-court loser to have raised his claims in the state court, as long as the decision is seeking "redress for an injury caused by the state-court decision itself." *Davani v. Virginia DOT, 434 F.3d 712, 719 (4th Cir. 2006); See also Hoblock v. Albany County Bd. of Elections, 422 F.3d 77, 87 (2d Cir. 2005)* ("[A] federal plaintiff cannot escape the Rooker-Feldman bar simply by relying on a legal theory not raised in state court."). In sum, if the federal suit seeks reversal of the state court decision itself, on whatever ground, it is a **[**20]** collateral attack on the judgment over which the federal district courts lack jurisdiction. The Second Circuit recently illustrated the rational for this principle with the following hypothetical example:

> Suppose a state court, based purely on state law, terminates a father's parental rights and orders the state to take custody of his son. If the father sues in

> federal court for the return of his son on grounds that the state judgment violates his federal substantive due-process rights as a parent, he is complaining of an injury caused by the state judgment and seeking its reversal. This he may not do, regardless of whether he raised any constitutional claims in state court, because only the Supreme Court may hear appeals from state-court judgments.

Hoblock v. Albany County Bd. of Elections, 422 F.3d 77, 87 (2d Cir. 2005).

In the instant case, it is indisputable that the Willners' complaint challenges the state court judgment in *Fairfax I,* a judgment that is not subject to review in any federal court but the Supreme Court of the United States. The complaint includes a litany of facts concerning the Willners' use of the property, their payment of [**21] taxes on the property, and the Leggets' failure to provide actual notice of their claim to the title-in short, the very facts at issue in the adverse possession litigation in *Fairfax I.* The Willners proceed in Counts I-III to contend that Virginia's adverse possession statute is unconstitutional *as-applied* to the Willners in this specific case, and seek an injunction ordering the clerk to remove the Final Order from the land records of Fairfax County.[10] Consideration of their federal claims thus necessarily involves reexam-

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[10] Thus, the Willners seek reversal of the state court judgment not only in the legal sense, but in the physical sense as well.

ination of the Fairfax County Circuit Court's application of the statute in *Fairfax I*, which this court is without jurisdiction to do.

C. Sovereign Immunity

Frey next contends that the Willners' suit is barred by the sovereign immunity of the Commonwealth of Virginia embodied in the *Eleventh Amendment of the United States Constitution.*[11] **[**22]** [HN11] Although not within the terms of the *Eleventh Amendment* itself, the principle of sovereign immunity has long been held to preclude suits brought by a State's citizen against the State in federal court. *See Idaho v. Coeur D'Alene Tribe of Idaho, 521 U.S. 261, 267-68, 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997)* (citing *Hans v. Louisiana, 134 U.S. 1, 10 S. Ct. 504, 33 L. Ed. 842* **[*924]** *(1890))*. It is equally well established that the *Eleventh Amendment* bars suits in which the state is not a named party, but is the real party in interest. *See Edelman v. Jordan, 415 U.S. 651, 663, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974)*; *Ford Motor Co. v. Department of Treasury, 323 U.S. 459, 464, 65 S. Ct. 347, 89 L. Ed. 389 (1945)*. Finally, [HN12] while Congress has the power to abrogate a state's sovereign immunity under the powers granted to it

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[11] This Amendment provides that [HN13] "the Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

by the Civil War Amendments, it is established law that Congress did not exercise this power when it passed *42 U.S.C. § 1983. See Edelman v. Jordan, 415 U.S. 651, 676, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974); Quern v. Jordan, 440 U.S. 332, 338, 99 S. Ct. 1139, 59 L. Ed. 2d 358 (1979).*
[23]**

The Willners' contend, however, that the instant suit fits into a well recognized exception to the general bar of suits against states recognized in *Ex Parte Young, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908).* In that case, and its progeny, [HN14] the Supreme Court has allowed suits against state officials acting in their official capacity[12] where the relief is properly characterized as prospective in nature. *See Verizon Md. Inc. v. PSC, 535 U.S. 635 at 645, 122 S. Ct. 1753, 152 L. Ed. 2d 871.* Whether a request for injunctive relief is prospective, in turn, requires a "straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." *Id.* (quoting *Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 296 (1997)).*[13] The distinction

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[12] The fictional distinction between suing a state official acting in his capacity, which is allowed under *Ex Parte Young*, and suing the state itself, which is prohibited, has been noted repeatedly, but upheld nevertheless. *See, e.g., Coeur d'Alene*, 521 U.S. at 269-70.

[13] Frey's contention that a state official acting in his official capacity is not a person and therefore not subject to suit under 42 U.S.C. § 1983, likewise depends on whether the Willners' requested relief can be properly characterized as prospective in

between prospective and retrospective relief is best exemplified by the facts of *Ex parte Young* itself. In *Young*, the question was whether railroad shareholders could bring a suit in the federal district court enjoining the enforcement of a recently enacted state statute setting railroad rates. *Ex parte Young, 209 U.S. 123, 130, 28 S. Ct. 441, 52 L. Ed. 714 (1908)*. Answering in the affirmative, the Supreme Court [**24] relied largely on the inadequacy of a means to test the constitutionality of the statute in state court. *Id. at 146*. In reaching this result, the Supreme Court noted that the penalties for violations of the statute had been made so severe that recourse to state courts by litigating a "test" violation would require a railroad company to bear a risk "the company ought not be required to take." *Id. at 165* [14]. Thus, the plaintiffs were allowed recourse to the federal courts in order to relieve them of the Hobson's choice between violating the statute and suffering substantial penalties on the one hand, or suffering the ongoing violation of their federal

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nature. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 n.10, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989) ("Of course a state official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because 'official-capacity actions for prospective relief are not treated as actions against the State.'") (quoting *Kentucky v. Graham*, 473 U.S. 159, 167 n.14, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985)).

[14] Because the severity of the penalties prevented the shareholders from testing the sufficiency of the act in state court, the Supreme Court found the penalties for violation of the act facially unconstitutional. *Id.*

constitutional rights on the other. [*925] *Id.*[15] Thus, [HN15] one of the primary rationales for the exception to state sovereign immunity recognized in *Ex parte Young* is to provide an adequate forum when federal constitutional rights are in peril and the state court's remedy is inadequate. As the Supreme Court has stated, "the [*Ex parte Young*] exception has been 'tailored to conform as precisely as possible to those specific situations in which it is necessary to permit the federal courts to vindicate [**25] federal rights." *Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 277 (1997)* (quoting *Papasan v. Allain, 478 U.S. 265, 277, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986)).*
[**26]

This case does not fit within the *Ex parte Young* exception. The injury for which the Willners seek redress is plainly not a matter of impending peril, but the loss of their property through the operation of Virginia's adverse possession statute nearly two years ago. Nor did the Willners lack an adequate forum in which to vindicate the claims they assert here. Indeed, they have done so in *Fairfax I* or *Fairfax II.* Moreover, the Willners do not seek to avoid a future violation of their federal rights, [**27] but restitution of property they claim was

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[15] By comparison, in *Edelman v. Jordan*, 415 U.S. 651, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974), the Supreme Court refused to allow injunctive relief that would result in the retroactive payments of benefits wrongfully withheld, and rejected the argument that "equitable restitution" is a permissible form of relief under *Ex Parte Young*. *Edelman*, 415 U.S. at 664-668.

wrongfully taken from them. Put simply, the Willners want their land back.[16] The relief they seek here, no matter how styled, is retrospective, not prospective, and the *Eleventh Amendment* therefore bars this suit. *See CSX Transp., Inc. v. Board of Public Works of the State of West Virginia, 138 F.3d 537, 542-43 (4th Cir. 1998)* (refunding taxes is retrospective relief); *Constantine v. Rectors and Visitors of George Mason University, 411 F.3d 474, 496 (4th Cir. 2005)* (expunging a failing grade from an academic record is retrospective relief); *Steffens v. Steffens, 955 F.Supp. 101, 105 n. 5 (D.Colo. 1997)* (injunction seeking to undo court-ordered sale of marital property in divorce proceeding is retrospective relief). The Willners deliberately chose not to assert their federal constitutional claims in *Fairfax I* and *Fairfax II*, and to save them for a future federal court case presumably because they thought the state court inadequate to adjudicate these claims. In these circumstances, "it would be error coupled with irony" to bypass the dictates of the *Eleventh Amendment*. [**28] *Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 276 (1997).*

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[16] In this respect, Frey's argument that Rule 19, Fed. R. Civ. P. requires joinder of the Leggetts may well have merit, but given the dismissal of the Willners' complaint here, there is no need to reach this issue. *Cf. National Union Fire Ins. Co. v. Rite Aid of S.C.*, Inc., 210 F.3d 246, 251 (4th Cir. 2000) ("A court should hesitate to conclude . . . that a litigant can serve as a proxy for an absent party unless the interests of the two are identical.").

D. Derivative Absolute Judicial Immunity

The final issue to be addressed is whether Frey is entitled to derivative absolute judicial immunity because he was clearly acting within his official capacity when he recorded the judgment transferring title of the property to the Leggetts.

[HN16] It has long been recognized as "a general principle of the highest importance to the proper administration of justice, that a judicial **[**29]** officer, in exercising the authority vested in him, should be free to **[*926]** act upon his own convictions, without apprehension of personal consequences to himself." *Stump v. Sparkman, 435 U.S. 349, 355, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978)* (quoting *Bradley v. Fisher, 80 U.S. 335, 347, 20 L. Ed. 646 (1871))*. For this reason, judicial officers are immune from liability for acts committed within the scope of their jurisdiction. *Sparkman, 435 U.S. at 364*. And, because the judicial decision-making protected by absolute judicial immunity is often carried out by court clerks, this immunity has been held to apply derivatively to clerks "who act in obedience to a judicial order or under the court's discretion." *McCray v. State of Maryland, 456 F.2d 1, 5 (4th Cir. 1972)*; *see also, Battle v. Whitehurst, 831 F.Supp. 522, 528 (E.D.Va. 1993)*; *Clay v. Yates, 809 F.Supp. 417, 424 (E.D.Va. 1992)*. It follows that Frey is clearly entitled to claim derivatively the benefit of absolute judicial immunity.

Seeking to avoid this result, the Willners cite *Pulliam v. Allen,*[17] and argue that Frey is not entitled to judicial immunity because they are seeking **[**30]** injunctive and declaratory relief. *See Pulliam v. Allen, 466 U.S. 522, 541-42, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984).* Yet this decision (to the extent it has not been subsequently abrogated by Congress)[18] clearly applies only to *prospective* relief, and because the relief the Willners seek is not prospective, *Pulliam* is not controlling here. *See Id.* ("We conclude that [HN17] judicial immunity is not a bar to *prospective* injunctive relief against a judicial officer acting in her judicial capacity.") (emphasis added). For this reason, Frey is entitled to derivative absolute judicial immunity.
[31]**

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[17] 466 U.S. 522, 104 S. Ct. 1970, 80 L. Ed. 2d 565.

[18] Congress effectively reversed the Supreme Court's holding in *Pulliam* by enacting the Federal Courts Improvement Act of 1996 ("FCIA"), Pub.L. No. 104-317, 110 Stat. 3847 (1996) (amending 42 U.S.C. § 1983). [HN18] Section 309(c) of FCIA bars injunctive relief in any section 1983 action "against a judicial officer for an act or omission taken in such officer's judicial capacity . . . unless a declaratory decree was violated or declaratory relief was unavailable." *See Holbert v. Cohen-Gallet*, 2006 U.S. Dist. LEXIS 1869, 2006 WL 47452 (E.D.N.Y. 2006). Because the Willners do not seek prospective relief, it is unnecessary to decide whether this extension of judicial immunity applies derivatively to court clerks. *See Hili v. Sciarrotta*, 140 F.3d 210, 215 (1998).

IV.

Although the Willners' claims are barred by the *Rooker-Feldman* doctrine, the *Eleventh Amendment*, and derivative absolute judicial immunity, a brief discussion of the merits of their constitutional claims is appropriate as an exercise of good judicial husbandry. The Willners allege that Virginia's law of adverse possession violates the *Takings Clause of the Fifth Amendment* [19] and the Due Process and *Equal Protection Clauses of the Fourteenth Amendment*. As noted, Virginia's law of adverse possession distilled to its essence is as follows: "To establish title to real property by adverse possession, a claimant must prove actual, hostile, exclusive, visible, and continuous possession, under a claim of right for the statutory period of fifteen years." *Grappo v. Blanks, 241 Va. 58, 61, 400 S.E.2d 168, 170, 7 Va. Law Rep. 1293 (1991)*. The Willners argue that the law, as-applied to them, violates their federal constitutional rights.

[32]**

[*927] It is clear beyond dispute that Virginia's resolution of a private land dispute through the use of its law of adverse possession does not constitute a taking under the *Fifth Amendment*. As the Supreme Court has stated: "Just as a State may create a

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[19] The *Fifth Amendment* prohibition against the taking of private property for public use without just compensation applies against the States through the *Fourteenth Amendment*. *See Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 160, 101 S. Ct. 446, 66 L. Ed. 2d 358 (1980).

property interest that is entitled to constitutional protection, the State has the power to condition the permanent retention of that property right on the performance of reasonable conditions that indicate a present intention to retain the interest." *Texaco v. Short, 454 U.S. 516, 526, 102 S. Ct. 781, 70 L. Ed. 2d 738 (1982). See also Vincent Montoya v. Candido G. Gonzales, 232 U.S. 375, 378, 34 S. Ct. 413, 58 L. Ed. 645 (1914).* In this regard, the power of a state to transfer property to another after its abandonment for a certain period of time of time has long been recognized as valid. *See, e.g., Hawkins v. Barney's Lessee, 30 U.S. 457, 5 Pet. 457, 466, 8 L. Ed. 190 (1831)* ("What right has any one to complain, when a reasonable time has been given him, if he has not been vigilant in asserting his rights?"). In short, "in ruling that private property may be deemed to be abandoned and to lapse upon the failure of its owner to take reasonable actions imposed by law, this Court **[**33]** has never required the State to compensate the owner for the consequences of his own neglect." *Short, 454 U.S. at 530.* [20] In this regard, the Virginia courts have concluded that the Willners neglected to protect their property interests by objecting to the Leggetts' possession of their land,

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[20] Thus, the Willners' reliance on *Pascoag Reservoir & Dam, LLC v. Rhode Island*, 217 F.Supp.2d 206, *aff'd on other grounds*, 337 F.3d 87 (2003), is misplaced; that case is neither apposite nor persuasive. There, the State of Rhode Island-not a private party-had acquired a portion of the Pascoag Reservoir through adverse possession and prescriptive easement. *Pascoag*, 217 F.Supp.2d at 211.

and the recognition of this fact is sufficient to defeat the Willners' Takings claim.

The Willners' Due Process argument fails as well. The Willners state that they had no notice that the Leggetts or their predecessors in title claimed to own the disputed property and had [**34] no notice that a cause of action against the Leggetts and their predecessors in title had accrued to the Willners until after the expiration of the fifteen year period prescribed by *Va. Code § 8.01-236.* The Willners contend that this lack of notice somehow violates the *Due Process Clause.*

This argument is meritless. The state, which of course must abide by the *Due Process Clause,* satisfies its constitutional notice requirement by passing "a rule of law uniformly affecting all citizens that establishes the circumstances in which a property interest will lapse through the inaction of its owner,"[21] and by ensuring that the Willners receive notice of the judicial proceeding which affects their property interest and an adequate opportunity to be heard at that hearing. *See Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 542, 105 S. Ct. 1487, 84 L. Ed. 2d 494 (1985)* ("An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and opportunity for hearing appropriate to the nature of the case."). In this regard, the Willners do not argue that the state failed to provide notice of the statute,

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[21] *Short,* 454 U.S. at 537.

nor do they contend that the [**35] notice of the judicial proceeding through which the Leggetts acquired title to the disputed property was insufficient, or that they were deprived of an adequate opportunity to be heard. Instead, the Willners argue that the Leggetts' failed to provide the Willners [*928] adequate notice of their hostile interest in the disputed land. Of course, the Leggetts cannot be considered state actors, and therefore need not abide by the notice requirement of the *Due Process Clause*.[22] More specifically, necessarily included in the general proposition that a private party need not inform an adverse party that the statute of limitations on its claim is about to expire, is the more specific proposition that one neighbor need not inform another that his rights in land are about to expire due to adverse possession. *Short, 454 U.S. at 536*. Further, even assuming that the plaintiffs have some right to notice of the running of a statute with respect to claims for adverse possession, the statute's open and continuous possession requirement provides just such notice. *LaDue v. Currell, 201 Va. 200, 207, 110 S.E.2d 217, 222 (1959)*. For these reasons, the Willners' Due Process [**36] claim fails.

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[22] *See National Collegiate Athletic Ass'n v. Tarkanian*, 488 U.S. 179, 191, 109 S. Ct. 454, 102 L. Ed. 2d 469 (1988) ("Embedded in our Fourteenth Amendment jurisprudence is a dichotomy between state action, which is subject to scrutiny under the Amendment's Due Process Clause, and private conduct, against which the Amendment affords no shield, no matter how unfair that conduct may be.").

Finally, the Willners do not state a claim for relief under the *Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.* Generally speaking, the *Equal Protection Clause* prohibits states from creating unreasonable, arbitrary, and invidious classifications. *Barefoot v. City of Wilmington, 306 F.3d 113, 121, 37 Fed. Appx. 626 (4th Cir. 2002).* Except in cases where a challenged law employs suspect classifications or significantly burdens a fundamental right, the law comports with the *Equal Protection Clause* if it is rationally related to a permissible government **[**37]** interest. *Id.* (citing *Pennell v. City of San Jose, 485 U.S. 1, 14, 108 S.Ct. 849, 99 L.Ed.2d 1 (1988)).* Given this standard, Virginia's adverse possession statute plainly passes equal protection muster. Thus, the Commonwealth of Virginia has an obvious and legitimate interest in resolving land disputes among its citizens, and the classification the Willners propose, *i.e.,* those whose land is subject to adverse possession, can hardly be considered invidious. Therefore, the Willners' Equal Protection claim, like their Takings and Due Process claims, is meritless.

IV.

In sum, the Willners claims are barred from consideration by the *Rooker-Feldman* doctrine, the Commonwealth of Virginia's sovereign immunity, and Frey's derivative absolute judicial immunity. But even assuming they were not, they would fail to

state a claim for which relief can be granted, and therefore must be dismissed. An appropriate Order will issue.

Alexandria, VA

March 15, 2006

/s/

T. S. Ellis, III

United States District Judge

Appendix D

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
August 29, 2007

No. 06-1432
1:05-cv-01315-TSE

MARGUERITE EVANS WILLNER; MICHAEL A. WILLNER

Plaintiffs - Appellants

v.

JOHN T. FREY, Clerk, Fairfax County Circuit Court;

Defendant - Appellee

COMMONWEALTH OF VIRGINIA

Intervenor

On Petition for Rehearing and Rehearing En Banc

The appellants' petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

Entered for a panel composed of Chief Judge Williams, Judge Michael, and Judge Gregory.

For the Court,

/s/ Patricia S. Connor

CLERK

Appendix E

Citations from Ninth Circuit Court of Appeals opinions, post-*Exxon*, affirming dismissal of cases under *Rooker-Feldman* based on "inextricably intertwined" analysis

1. "Because the district court was required to "refuse to decide any issue raised in the suit that is 'inextricably intertwined' with an issue resolved by the state court," Matthisen's challenge to the jurisdiction of the state court is also barred by the Rooker-Feldman-Feldman doctrine."
Matthisen v. Alaska, 2007 U.S. App. LEXIS 21323 (9th Cir. 2007).

2. "The district court also properly concluded that it lacked subject matter jurisdiction over Watkins' constitutional claims because they were "inextricably intertwined" with the state court decision." *Watkins v. Proulx*, 2007 U.S. App. LEXIS 20883 (9th Cir. 2007).

3. "The district court properly concluded that it lacked subject matter jurisdiction pursuant to the Rooker-Feldman-Feldman doctrine because Holst's action amounted to a forbidden "de facto appeal" of a state court judgment and raised a constitutional claim that was "inextricably intertwined" with that state court judgment." *Holst v. Oregon*, 2007 U.S. App. LEXIS 20850, 1-2 (9th Cir. 2007).

4. "The district court properly concluded that Torres's action was barred by the Rooker-Feldman doctrine because it was a forbidden de facto appeal from suspension proceedings, and the remaining claims were inextricably intertwined with the forbidden appeal." *Torres v. State Bar of Cal.*, 2007 U.S. App. LEXIS 20355 (9th Cir. 2007)

5. "The district court properly concluded that it lacked subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine because Marcum's action amounted to a forbidden 'de facto appeal' of state court judgments and raised claims that are 'inextricably intertwined' with those state court decisions." *Marcum v. Grant County*, 234 Fed. Appx. 527 (9th Cir. 2007).

6. "The district court properly dismissed Appellants' action pursuant to Rooker-Feldman because it is a 'de facto appeal' of the prior state court judgments adjudicating the boundaries and ownership of real property and raises claims that are 'inextricably intertwined' with those state court decisions." *Pettigrew v. Lingle*, 231 Fed. Appx. 556 at 4 (9th Cir. 2007).

7. "The Safouanes seek, *inter alia*, a declaratory judgment that all orders and judgments relating to them in the state court system are void, and request that the federal court take supervisory control of state proceedings. Any such relief, however, would

be inextricably intertwined with the results of the state court proceedings and would require the district court to review state court rulings." *Safouane v. Fleck*, 226 Fed. Appx. 753 at 9-10 (9th Cir. 2007).

8. "The district court did not err when it concluded that Timmons' first, second and ninth causes of action were 'inextricably intertwined' with issues resolved in the state court proceeding and 'at least in part a forbidden de facto appeal of a state court judgment,' and were therefore barred by the doctrine of *Rooker-Feldman*." *Timmons v. Manatt, Phelps & Phillips*, 214 Fed. Appx. 718 at 3 (9th Cir. 2006).

9. "The district court properly determined that Cook's action against the judicial defendants is barred by the *Rooker-Feldman* doctrine because his complaint essentially challenges the propriety of the state court judgment. See *Noel*, 341 F.3d at 1158 (referring *to Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923) and *Dist. of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983)). Thus, the district court was required to 'refuse to decide any issue raised in the suit that is 'inextricably intertwined' with an issue resolved by the state court.'" *Cook v. Colo. Appeals Court*, 213 Fed. Appx. 616 at 2-3 (9th Cir. 2006).

10. "Thus, the district court was required to 'refuse to decide any issue raised in the suit that is

'inextricably intertwined' with an issue resolved by the state court.'" *Kelley v. Kahan*, 214 Fed. Appx. 640 at 3 (9th Cir. 2006).

11. "The doctrine also precludes constitutional claims that are 'inextricably intertwined' with the forbidden appeal." *Ignacio v. Judges of the United States Court of Appeals for the Ninth Circuit*, 453 F.3d 1160 at 11 (9th Cir. 2006).

12. "Because Lamarr's constitutional claims are 'inextricably intertwined' with the substance of the state court decision, review of such claims is also barred under the *Rooker-Feldman* doctrine." *Lamarr v. Oregon*, 151 Fed. Appx. 512, 513 (9th Cir. 2005).

13. "Because Kennedy's constitutional claims presented in federal court are 'inextricably intertwined' with the substance of the state court decisions, review of those claims is also barred under the *Rooker-Feldman* doctrine." *Kennedy v. L.A. County Superior Court*, 151 Fed. Appx. 514, 515 (9th Cir. 2005).

14. "We reject Heron's contention that the court retains jurisdiction over his constitutional challenge to Cal. Gov't Code § 68081 because it is 'inextricably intertwined' with his state court proceeding." *Heron v. Supreme Court of Cal.*, 142 Fed. Appx. 986 (9th Cir. 2005).

15. "We conclude that the claims raised by Tittle in his § 1983 action are 'inextricably intertwined' with the state court decisions rendered in relation to the Tittles' marriage dissolution proceedings such that the adjudication of the federal claims would undercut those state court rulings" *Tittle v. Bottorff-Tittle*, 131 Fed. Appx. 554, 555 (9th Cir. 2005).